IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	James O. Gilkerson et al.	Examiner: Scott Getzow
Serial No.:	10/756,897	Group Art Unit: 3762
Filed:	January 14, 2004	Docket No.: 279.214US3
Customer No.: 45458		Confirmation No.: 3622
Title:	IMPLANTABLE DEFIBRILLATORS WITH PROGRAMMABLE CROSS-CHAMBER BLANKING	

APPELLANTS' REPLY BRIEF UNDER 37 CFR § 41.41

Mail Stop Appeal Brief- Patents
Commissioner for Patents
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Alexandria, VA 22313-1450

In response to the Examiner's Answer ("Answer") mailed June 7, 2011, please see the remarks below:

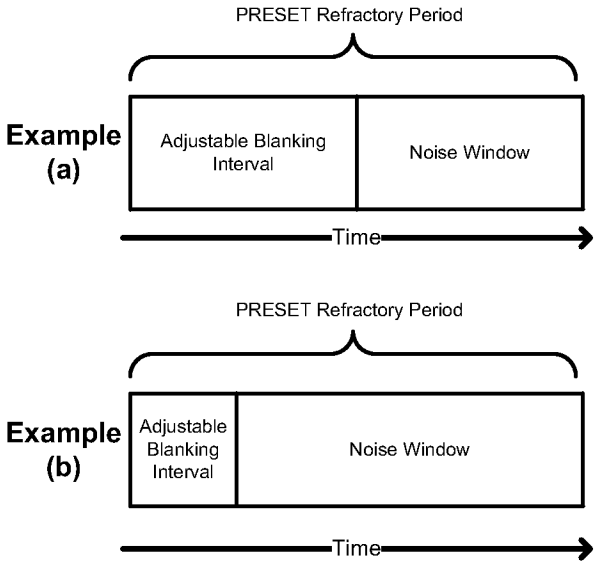
REMARKS

Appellant has reviewed the Answer, and believes the statements in the original Appeal Brief remain accurate and compelling. In responding to the Answer, Appellant respectfully maintains that the Appeal Brief, which is hereby incorporated by reference and reasserted in response, overcomes the original grounds of rejections. The specific responses contained in the Answer are addressed below.

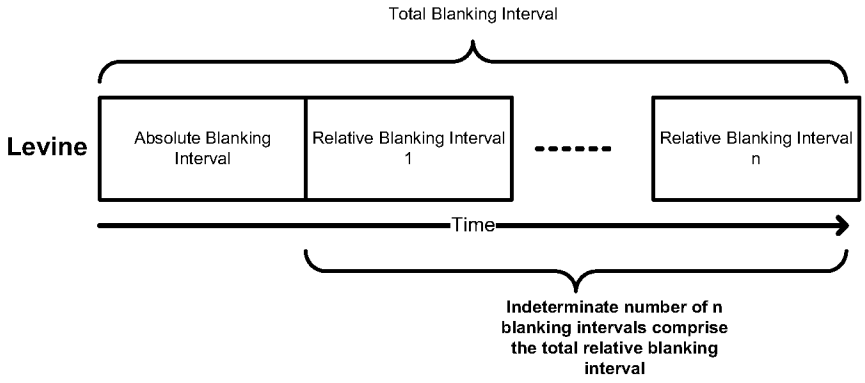
Claim Rejections – 35 USC § 102(b), 35 USC § 103

Claims 25 – 33 and 36 are rejected under 35 U.S.C. 102(b) over Levine et al. (U.S. Patent No. 5,776,167; hereinafter "Levine"). Claims 37 – 45 are rejected under 35 U.S.C. 103(a) over Levine. Claims 25 – 33 and 36 – 45 are rejected under 35 U.S.C. 103(a) over Lu (U.S. Patent No. 5,591,214) in view of Levine.

Appellant respectfully maintains that these rejections constitute clear error warranting reversal. The present claims recite "a noise window interval . . . *derived* from a difference between a *preset* refractory period and [an] adjustable blanking interval." Thus, the duration of the noise window is dependent on the size of the adjustable blanking interval. Two illustrative (but not limiting) examples are shown below (see also Application at FIG. 3):



In contrast, Levine discloses an initial, and absolute, blanking interval, followed by an indeterminate number of relative blanking intervals (the number of such relative blanking intervals determined by information sensed by the device during the relative blanking intervals). For example:



In the Answer, the Examiner asserts that Levine's "relative blanking interval" is the same as the noise window recited or incorporated in the present claims. The Examiner then asserts that Levine's total relative blanking interval can be calculated by subtracting the initial *absolute* blanking interval from the *total* blanking interval. However, this ignores an explicit recitation in claims 25 and 37. Specifically, the Examiner is clearly erroneously ignoring the claim language reciting that the noise window interval is "derived from a difference between a *preset* refractory period and the *adjustable* blanking interval." The total blanking interval of Levine is not preset. Instead, Levine's total blanking interval is *variable by design* and Levine's total blanking interval is not established until *after* Levine's total blanking interval has already expired. Levine explains:

> [i]mmediately following . . . release of a stimulation pulse on a first channel . . . the sensing circuitry for the second channel . . . is disabled for a period known as an absolute blanking interval. Contrary to existing techniques, the present invention repeatedly initiates a relative blanking interval following the initial absolute blanking period. *During these relative blanking intervals the sensing circuitry is enabled.* Signals detected during the relative blanking intervals are presumed to be crosstalk. *When a signal is detected during one relative blanking interval, a subsequent relative blanking interval is initiated.*
>
> (Levine at column 4, lines 33 – 52 (emphasis added).)

Levine does mention that "if no relative blanking interval passes without detected signals,

blanking is still terminated when the total length of the blanking intervals reaches a predetermined maximum blanking interval," (Levine at col. 4, lines 49 – 52.) However, this only provides an upper maximum bound on Levine's total blanking interval. Levine's total blanking interval is still indeterminate in duration as it may terminate prior to the predetermined maximum blanking interval (see, e.g., Levine at col. 8, lines 52 – 63.)

In an illustrative example provided by Levine, an absolute blanking interval is 12 milliseconds (ms) (Levine at col. 7, line 32), the retriggerable relative blanking intervals are 4 ms each (Levine at col. 7, line 61), and the maximum blanking interval is 120 ms (Levine at col. 8, lines 57 – 59, and col. 10, lines 9 – 10). In this illustrative example, Levine's total relative blanking interval can be between 4 ms and 108 ms, and thus Levine's total blanking interval can be between 16ms and 120ms. One of ordinary skill would readily appreciate that Levine's total blanking interval will vary in duration in response to a presence or absence of sensing activity as discussed above. Accordingly, because Levine's total blanking interval is variable, it is clearly erroneous to assert that the total blanking interval of Levine is somehow equivalent to the *preset* interval recited or incorporated in the present claims.

Additionally, in the Examiner's Answer, the Examiner disagrees with Appellants' reasoning that Levine does not disclose an adjustable absolute blanking interval. In support of this assertion, the Examiner asserts that:

> the maximum blanking interval, which is the combination of the absolute blanking interval and the relative blanking interval, can be adjusted to any suitable length. Thus, it could be the case that the relative blanking interval is held the same, but the physician adjusts the absolute blanking interval instead, resulting in an adjusted maximum blanking interval. Further, column 10, lines 12+ of Levine teach that the physician can programmably shorten the absolute blanking interval. *Answer*, at 8.

Appellant respectfully disagrees and directs the Board's attention to the above discussion of Levine and the remarks presented in Appellants' original brief.

CONCLUSION

Appellant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. Accordingly, Appellant respectfully requests the Board issue an order to withdraw the rejections.

If necessary, please charge any additional fees or credit overpayment to Deposit Account 19-0743.

Respectfully submitted,

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Date August 4, 2011 By /Suneel Arora/

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